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IN THE COURT OF APPEALS OF INDIANA

CHRISTOPHER JACKSON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 48A02-0702-CR-163
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Dennis Carroll, Judge
Cause No. 48D01-0509-FC-280

November 14, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Christopher Jackson appeals his sentences for Escape,[1] a class C felony, Resisting Law Enforcement,[2] a class A misdemeanor, Possession of Marijuana,[3] a class A misdemeanor, Possession of a Controlled Substance,[4] a class D felony, and Operating a Vehicle with a Blood Alcohol Concentration (BAC) of .08 or More,[5] a class C misdemeanor. Specifically, Jackson argues that the trial court erred by (1) considering previous criminal activity that did not result in a conviction as part of Jackson's criminal history, which it found to be an aggravating factor, and (2) failing to consider the fact that Jackson did not harm anyone to be a mitigating factor. Finding no error, we affirm the judgment of the trial court.

FACTS

On September 29, 2005, Elwood City Police Officer Jamie Crawford observed a red Chevrolet pickup truck traveling westbound on Main Street with "improper headlights." Appellant's App. p. 28. Officer Crawford activated his vehicle's emergency lights and stopped the pickup truck four blocks later. As soon as Officer Crawford began to exit his vehicle, Jackson, who was driving the pickup truck, began to drive away. Officer Crawford activated his siren and again stopped Jackson's vehicle. Upon approaching the pickup truck, Officer Crawford immediately recognized Jackson as the driver of the vehicle because he had

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[1] Ind. Code § 35-44-3-5.

[2] I.C. § 35-44-3-3.

[3] Ind. Code § 35-48-4-11.

[4] I.C. § 35-48-4-7.

[5] Ind. Code § 9-30-5-1.

had contact with him earlier that day when Jackson had "trouble with his neighbor." Id. During that encounter, Jackson admitted that he had consumed alcohol and promised to stay inside his home.

After being asked to leave the car, Jackson slurred, "Your [sic] going to take me to jail aren't you?" Id. Officer Crawford explained that he needed to conduct field sobriety tests, and Jackson ultimately failed the horizontal gaze nystagmus test, the walk-and-turn test, and the one-leg stand test. Officer Crawford repeatedly had to ask Jackson to remove his hands from his pockets while the tests were being administered. Officer Crawford returned to his vehicle after administering the tests, and Sergeant Puente[6] stayed with Jackson. Jackson again put his hands into his pockets and Sergeant Puente asked him to remove them. When Jackson refused, Sergeant Puente grabbed Jackson's arm and a struggle ensued. A plastic baggy containing a substance later identified as marijuana fell from Jackson's pocket during the struggle.

Jackson was escorted to the police car. As he was being patted down, Jackson became hostile and ran from the officers, dropping another baggy containing marijuana as he ran. The officers eventually tackled Jackson and had to administer pepper spray to make him comply with their orders. Jackson consented to a chemical test and was found to have a BAC of .13 percent. While booking Jackson, the officers found a small plastic wrapper on Jackson that contained twelve pills, which were later identified as Alprazolam.[7]

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[6] Sergeant Puente's first name is not contained in the record.

[7] Alprazolam is generic for Xanax. Appellant's App. p. 30.

On September 28, 2005, the State charged Jackson with class A misdemeanor operating a vehicle while intoxicated endangering a person and class B misdemeanor public intoxication in addition to the crimes to which he ultimately pleaded guilty. On December 11, 2006, Jackson pleaded guilty to class C felony escape, class A misdemeanor resisting law enforcement, class A misdemeanor possession of marijuana, class D felony possession of a controlled substance, and class C misdemeanor operating a vehicle with a BAC of .08 or more. The State dismissed the two remaining charges. The plea agreement provided that Jackson could be sentenced to a maximum executed term of four years imprisonment.

A sentencing hearing was held on January 9, 2007, and the trial court found that

> [w]ith respect to the sentence itself and aggravation and mitigations to be considered, there is a Blakely[8] Waiver here and so it's, I say that because in your case the extensive contacts that you've had with law enforcement I consider to be relevant, even though not all of those have been reduced to judgment. Although there are plenty of judgments against you, either three prior felonies or two, if you're right that one was reduced to a misdemeanor. Our record doesn't seem to suggest that. But this is clearly at least your third felony or maybe your fourth felony. And so I consider that plus the extensive contact you've had with law enforcement to be a fairly substantial aggravating circumstance. The mitigation here is the plea of guilty, the acceptance of responsibility, the cooperation. I'm not able to ascertain, really, honestly sir, whether or not you're remorseful or not. . . . Hardship, you know, hardship on everybody's kids. I, I don't see that these particular offenses in your particular circumstances is different than any other parent who might suffer incarceration, so I'm, I'm not accepting those mitigators.

Tr. p. 48-49. The trial court ordered Jackson's sentences to run concurrently for an aggregate term of seven years imprisonment with three and one-half years suspended to probation.

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[8] Blakely v. Washington, 542 U.S. 296 (2004).

Thus, the trial court ultimately imposed an executed term of three and one-half years imprisonment. Jackson now appeals.

DISCUSSION AND DECISION

We note at the outset that Jackson committed the offenses after the April 2005 amendments to the Indiana sentencing statutes; thus, we apply the amended versions thereof. Gutermuth v. State, 868 N.E.2d 427, 431 n.4 (Ind. 2007). We review challenges to the trial court's sentencing process for an abuse of discretion. Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007). Sentencing statements are not required to contain a finding of aggravators or mitigators; rather, they need include only a "reasonably detailed recitation of the trial court's reasons for imposing a particular sentence." Id. If the statement does, however, include a finding of aggravators or mitigators, then it must "identify all significant mitigating and aggravating circumstances and explain why each circumstance has been determined to be mitigating or aggravating." Id.

Jackson argues that the trial court improperly considered his previous criminal activity that did not result in convictions to be an aggravating factor. Specifically, Jackson argues that "[t]his completely goes against the Courts [sic] interpretation of Blakely . . . [t]herefore, Jackson deserves to be re-sentenced in accordance with Blakely." Appellant's Br. p. 5. However, as the trial court noted, the plea agreement Jackson entered into provided that he "knowingly waives the right to have lawful aggravators determined by a jury under Blakely v. Washington, Indiana case law, and/or the Indiana Constitution and agrees that the Court shall make such finding of said aggravators." Appellant's App. p. 21. Jackson makes no

argument that the waiver is invalid.

Furthermore, as noted above, we apply the amended sentencing statutes herein because Jackson committed the offenses after the April 2005 amendments. Inasmuch as the amended sentencing scheme was specifically enacted to incorporate advisory sentences rather than presumptive sentences and to comply with the holdings in Blakely and Smylie v. State, 823 N.E.2d 679 (Ind. 2005), Blakely is not implicated. Mendoza v. State, 869 N.E.2d 546, 555 n.9 (Ind. Ct. App. 2007), trans. denied. Thus, Jackson's argument fails.

Jackson also argues that the trial court erred by not considering the fact that he did not harm anyone to be a mitigating factor. We first note that Jackson did not raise this proposed mitigator to the trial court and that our Supreme Court recently reaffirmed that a trial court does not abuse its discretion by failing to consider a mitigating factor that the defendant did not raise at sentencing. Anglemyer, 868 N.E.2d at 492. Furthermore, the fact that Jackson did not injure either an innocent pedestrian or motorist while driving intoxicated or Officer Crawford or Sergeant Puente while struggling to escape is a fortuitous occurrence for which Jackson should be thankful. Thus, the trial court did not abuse its discretion by failing to find Jackson's good fortune to be a mitigating factor.

The judgment of the trial court is affirmed.

MAY, J., and CRONE, J., concur.